

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Case No. 5:18-CV-229-FL**

PANDUIT CORP.,

Plaintiff

v.

CORNING INCORPORATED,

Defendant.

**ORDER OF DISMISSAL
AND FINAL JUDGMENT**

This is a patent infringement action brought by Plaintiff Panduit Corp. (“Panduit”) against Defendant Corning Incorporation (“Corning”). (DE 43 ¶ 2). This Court has jurisdiction over the claims and counterclaims in this action pursuant to 28 U.S.C. §§ 1331, 1338, 2201, and 2202. (*Id.* ¶ 5; DE 53 at 12). The patents-in-suit in this action are U.S. Patent Nos. 8,351,027 (the “’027 Patent”) and 8,488,115 (the “’115 Patent”) (collectively, “the Asserted Patents”). Panduit is the owner by assignment of the Asserted Patents. (DE 43 ¶¶ 8-9). Panduit accuses certain Corning multimode fibers that are made according to processes (“Accused Processes”) that Panduit contends infringe, literally or under the doctrine of equivalents, one or more of claims of the Asserted Patents. (DE 43 ¶ 29). In its responsive pleading, Corning (a) denies infringement of the Asserted Patents and (b) asserts counterclaims of declaratory judgment of non-infringement and invalidity of the Asserted Patents. (DE 53 at 5-10, 12-16).

The Court entered a *Markman* Order on September 27, 2021 construing disputed limitations of the Asserted Patents. (DE 144, “September 27 Order.”). The Parties to this action then filed a Stipulation of Dismissal and Final Judgment on November 2, 2021, (DE 153), stipulating that under the September 27 Order, Panduit cannot prevail on the issue of

infringement because Panduit cannot prove that Corning's processes, as understood by Panduit, infringe the claims of the Asserted Patents. (*Id.*, ¶ 7). Nothing in the stipulation waived any arguments by Corning, including without limitation the argument that Panduit cannot prevail on the issue of infringement regardless of this Court's September 27 Order. (*Id.*, ¶ 8). The same having been considered and good cause having been shown therefore, IT IS HEREBY ORDERED:

1. FINAL JUDGMENT will be entered in favor of Corning and against Panduit that the Accused Processes do not infringe the claims of the Asserted Patents under the Court's September 27 Order, and the Clerk is directed to enter Judgment on the docket in this case;
2. Corning's unadjudicated affirmative defenses and counterclaims of non-infringement and invalidity of the Asserted Patents are DISMISSED WITHOUT PREJUDICE in view of the Court's Order, and without prejudice to reassert the foregoing affirmative defenses and counterclaims in the event of remand or other assertions by Panduit under the Asserted Patents; and
3. This Order of Dismissal and Final Judgment is without prejudice to the parties' rights to appeal any future orders issued by the Court and is without prejudice to either party's right to file a motion to declare this an exceptional case under 35 U.S.C. § 285 and award attorneys' fees and costs or to file any other motion for attorneys' fees and/or costs.

SO ORDERED. This the 10 day of November, 2021.



LOUISE WOOD FLANAGAN
United States District Judge